

22-CV-0675

CAUSE NO. \_\_\_\_\_

SALT &amp; PEPPER RESTAURANTS, INC.

*Plaintiff,*

VS.

TIGHT ENDS SPORTS BAR & GRILL, LLC  
and TIMOTHY DUNGAN*Defendants.*§  
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IN THE DISTRICT COURT

GALVESTON COUNTY, TEXAS

Galveston County - 56th District Court

\_\_\_\_ JUDICIAL DISTRICT

**PLAINTIFF'S ORIGINAL PETITION**

Plaintiff Salt & Pepper Restaurants, Inc. ("Salt & Pepper" or "Landlord") files this Original Petition against Tight Ends Sports Bar & Grill, LLC ("Tight Ends" or "Tenant") and Timothy Dungan ("Dungan") and respectfully states as follows:

**PARTIES**

1. Plaintiff is corporation duly formed and existing under the laws of the State of Texas and having its principal place of business in Fort Bend County, Texas.

2. Defendant Tight Ends Sports Bar & Grill, LLC is a Texas limited liability company with its office in Frisco, Texas. Tenant may be served through its registered agent, United States Corporation Agents, Inc., at 9900 Spectrum Drive, Austin, Texas 78717.

3. Defendant Timothy Dungan may be served at 1603 Wildfire Lane, Frisco, TX 75033.

**JURISDICTION AND VENUE**

4. This Court may exercise personal jurisdiction over all parties. The damages and relief sought are within the jurisdictional limits of this Court.

Status Conference - 07/21/2022

5. Pursuant to TEX. CIV. PRAC. & REM. CODE § 15.0115, venue is proper in Galveston County because this case involves a landlord-tenant dispute concerning real property in Galveston County.

6. At this time, Landlord seeks monetary relief between \$300,000 and \$1,000,000, including damages of any kind, penalties, costs, expenses, pre-judgment interest, and attorney's fees.

#### **FACTUAL BACKGROUND**

7. On May 20, 2016, Salt & Pepper, as Landlord, and Tight Ends, as Tenant, entered into a lease agreement (the "Lease Agreement"). By the terms of the Lease, Landlord leased to Tenant for a period of fifteen (15) years commercial space commonly as known as 2502 Gulf Freeway, League City, Galveston County, Texas 77573.

8. Pursuant to the Lease Agreement, Day Star Restaurant Holdings, LLC (the "Guarantor") agreed to be jointly liable for all obligations imposed upon Tight Ends, including but not limited to, full payment of all amounts due and owing to Landlord.

9. As set forth in the Lease Agreement, Tenant agreed to pay Landlord monthly rent in the amount of \$32,000 (the "Basic Rent"). After four years, the Basic Rent increased according to the CPI index. In addition, Tenant is responsible for paying monthly taxes, insurance, utilities and other operating costs.

10. Starting in April of 2020, Tenant failed to pay the Basic Rent, monthly taxes, and insurance. In addition, in violation of the Lease Agreement, Tenant failed to provide evidence of insurance, certified financials, and allowed its guarantor to be insolvent and cease to exist. Tenant's defaults continued throughout 2020, 2021, and 2022.

11. Starting in 2020 and continuing through 2022, Landlord sent Tenant multiple notices demanding payment of all outstanding rent due and owing under the Lease. In response to Landlord's demands, Tenant failed and refused to pay the amount outstanding. Instead, on April 9, 2022, Tenant abandoned the Premises. In doing so, Tenant stole several valuable items that are Landlord's property, including but not limited to its POS and KDS systems.

12. Despite adequate notice, Tenant's balance remains unpaid and Tenant is in default for past and future rent and other obligations under the lease.

13. As stated above, Tenant allowed the Guarantor to forfeit its right to do business in the State of Texas. Specifically, on or about January 26, 2018, the Guarantor's right to transact business in the state of Texas was revoked. The Guarantor's sole member and manager is Defendant Dungan. The Guarantor's right to transaction business in Texas remained revoked during the time of Tenant's defaults.

#### **CAUSE OF ACTION – BREACH OF CONTRACT**

14. Landlord and Tenant are parties to a valid and enforceable agreement, namely the Lease. Landlord performed its obligations under the Lease.

15. Tenant breached the Lease by, among other things, failing to pay all amounts due and owing thereunder.

16. Tenant's breach of the Lease is the cause of actual damages to Landlord in excess of the minimum jurisdictional limits of this Court, for which Landlord now sues. Such damages will continue to accrue.

17. Additionally, the Guarantor forfeited its corporate privileges as early as January of 2018. When its charter was revoked, the Guarantor created and/or incurred a liability with the Lease. Specifically, the Guarantor is jointly liable for all obligations of the Tenant created under

the Lease, including but not limited to all rent due and owing. Accordingly, pursuant to Chapter 171 of the Texas Tax Code and other applicable law, Dungan is personally liable for all obligations incurred by the Tenant, including all rent owed under the Lease.

**ATTORNEY'S FEES**

18. Pursuant to the Lease and TEX. CIV. PRAC. & REM. CODE § 38.001, *et seq.*, the Landlord hereby seeks and is entitled to recover its reasonable and necessary attorney's fees and costs.

**CONDITIONS PRECEDENT**

19. All conditions precedent to Landlord's right to recover herein have been performed, have occurred, or have been waived.

**PRAYER**

Landlord respectfully requests that Defendants be cited to appear and answer, and that upon final trial hereof, judgment be entered in favor of Landlord and against Defendants for:

- a. all actual damages incurred and proved at trial;
- b. reasonable and necessary attorneys' fees and expenses;
- c. costs of court;
- d. pre-judgment and post-judgment interest at the maximum amount allowed by law; and,
- e. all other relief, at law or in equity, to which Tenant may be justly entitled.

Respectfully submitted,

GRAY REED

By: /s/ Preston T. Kamin

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ATTORNEYS FOR PLAINTIFF

**Automated Certificate of eService**

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Jackie Kish on behalf of Preston Kamin  
 Bar No. 24062817  
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 Envelope ID: 63747149  
 Status as of 4/20/2022 4:07 PM CST

Associated Case Party: Salt & Pepper Restaurants, Inc.

Name	BarNumber	Email	TimestampSubmitted	Status
Preston TKamin		pkamin@grayreed.com	4/20/2022 3:55:58 PM	SENT
Tyler J.McGuire		tmcguire@grayreed.com	4/20/2022 3:55:58 PM	SENT

## Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Jackie Kish		jkish@grayreed.com	4/20/2022 3:55:58 PM	SENT